

## GOVERNMENT OF THE DISTRICT OF COLUMBIA

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## BOARD OF ZONING ADJUSTMENT

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## PUBLIC HEARING

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WEDNESDAY  
APRIL 7, 1999

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The Board met in Hearing Room 220 South at 441 4th Street, N.W.,  
Washington, D.C., at 1:00 p.m., Sheila Cross Reid, Chairperson, presiding.

PRESENT

SHEILA CROSS REID, Chairperson  
JERRY GILREATH, Board Member  
JOHN F. PARSONS, Member of the Zoning Commission

STAFF PRESENT

SHERI PRUITT-WILLIAMS, Interim Director, Office of Zoning  
PAUL HART, Office of Zoning  
JOHN NYARKU, Office of Zoning  
BEVERLY BAILEY, Office of Zoning



## C-O-N-T-E-N-T-S

<u>AGENDA ITEM</u>	<u>PAGE</u>
PRELIMINARY MATTERS . . . . .	4
<u>APPLICATION OF NATIONAL GRADUATE UNIVERSITY:</u> <u>16445 ANC-6B</u> (TO BE READVERTISED). . .	6
<u>APPLICATION OF ST. MARTIN'S CATHOLIC CHURCH:</u> <u>16444 ANC-5C</u> (POSTPONED TO MAY 7TH HEARING) . . . . .	20
<u>APPLICATION OF DRM AND ASSOCIATES, INC:</u> <u>16446 ANC-6A</u> . . . . .	27
<u>WITNESS</u>	
DONALD MADDEN. . . . .	27

PROCEEDINGS

1:40 A.M.

CHAIRPERSON REID: The hearing will please come to order.

Good afternoon, ladies and gentlemen. This is the April 7th Public Hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Sheila Cross Reid. Joining me today are Gerry Gilreath, representing the National Capital Planning Commission and John Parsons, representing the Zoning Commission.

Copies of today's hearing agenda are available to you. They're located to my left near the door.

All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located at each end of the table in front of us.

Upon coming forward to speak to the Board, please give both cards to the reporter who is seated to my report.

The order of procedure for special exception and variance cases will proceed as follows: (1) statement of witnesses of the Applicant; (2) government reports including Office of Planning, Department of Public Works, the ANCs, etcetera; (3) persons and parties in support; (4) persons and parties in opposition; (5) closing remarks by the Applicant.

Cross examination of witnesses is permitted for persons or parties with direct interest in the case. The record will be closed at the conclusion of each case except for any materials specifically requested. The Board and the staff will specify at the end of the hearing exactly what is expected.

The decision of the Board in these protested cases must be based exclusively on the public record. To avoid any appearance to the contrary the

1 Board requests that persons present not engage members of the Board in  
2 conversation.

3 The Board will make every effort to conclude the public hearing  
4 as near as possible to 6 o'clock p.m. If the afternoon case is not completed by 6  
5 p.m., the Board will assess whether it can complete the pending case or cases  
6 remaining on the agenda.

7 At this time the Board will consider any preliminary matters.  
8 Preliminary matters are those which relate to whether a case will or should be heard  
9 today such as a request for postponement, continuance or withdrawal of whether  
10 proper and adequate notice of the hearing has been given.

11 If you're not prepared to go forward with the case today, if you  
12 believe that the Board should not proceed, now is the time to raise such a matter.

13 Preliminary matters?

14 MS. PRUITT-WILLIAMS: Madam Chair, staff has some  
15 preliminary matters and then we can move to the audience.

16 CHAIRPERSON REID: Okay.

17 MS. PRUITT-WILLIAMS: On Case No. 16445, the Applicant  
18 National Graduate University, if the Applicant could come forward, please.

19 (Pause.)

20 MR. SCHAUER: Madam Chairperson, I rise in reference to  
21 Case 16445, the Application of the National Graduate University. I do not believe  
22 this case is ready to go forward today and I request that the Board postpone  
23 consideration until a later date. There are several concerns, the first of which is that  
24 the Application is advertised as a special exception for a private school under  
25 Section 206 of the zoning regulations, but there is a letter in file from the Zoning  
26 Administrator, dated January 29th, which specifies Section 210 as the appropriate  
27 remedy, that is the special exception for colleges and universities. The facts in the

1 record, we believe, support the Zoning Administrator's decision. First of all, the  
 2 Applicant is designated as the National Graduate University and I stress the word  
 3 University. The application form describes the use to include graduate level  
 4 curricula in the District of Columbia and the attachment to the application includes a  
 5 proposed use for university level courses for those in management, human service  
 6 and government.

7 The higher standard for Section 210, we believe, is appropriate  
 8 in this case. Colleges and universities are not always good neighbors and in  
 9 particular, the campus plan which would be required under Section 210 is an  
 10 essential element of an application and it requires the Applicant to state present and  
 11 future expected use of the campus. Furthermore, any amendments to the campus  
 12 plan would require a special exception.

13 CHAIRPERSON REID: Is there anyone who would -- are you  
 14 affiliated with the case?

15 DR. BOEK: Yes, I'm Dr. Boek, President of the university.

16 CHAIRPERSON REID: Okay.

17 DR. BOEK: We have followed the guidance of staff of the D.C.  
 18 government in applying. That's within -- more than once. And have only recently  
 19 learned that the Zoning Administrator -- we had met with Ms. Hicks twice and this  
 20 letter contained a difference in zoning category for which we had applied.

21 I met with the staff again two days ago here and they suggested  
 22 we supply supplemental information which I have available copies for each one and  
 23 respectfully ask that that -- provide you with this and that it be included in the record.

24 CHAIRPERSON REID: Okay. Tell us what you are? Are you a  
 25 private school or are you a college or university?

26 DR. BOEK: We're a private, independent, nonprofit institution -

27 -

1 MS. PRUITT-WILLIAMS: Dr. Boek, do you confer master's  
2 degrees of certificates? If someone goes to your university, can they get a master's  
3 in a program? Or just courses?

4 DR. BOEK: Graduate degrees, that's right.

5 MS. PRUITT-WILLIAMS: Master's degrees in what area, sir?

6 DR. BOEK: I'm sorry?

7 MS. PRUITT-WILLIAMS: In what areas? Master's degrees in  
8 what areas?

9 DR. BOEK: In management, human service and constitutional  
10 democracy.

11 MS. PRUITT-WILLIAMS: So you have a two-year accredited  
12 program?

13 DR. BOEK: We will be launching that here. It has not gone  
14 through that process yet. It cannot until we're ready sometime probably not until  
15 next fall.

16 MS. PRUITT-WILLIAMS: But your hope is to actually have an  
17 accredited -- because the information that we have in our file is sufficiently unclear to  
18 determine whether it is a private school or a university because you say it was not  
19 clear enough. That was one of the concerns.

20 DR. BOEK: Would you like this information now?

21 MS. PRUITT-WILLIAMS: If this is a university, we need to re-  
22 advertise this under Section 210 which means that the hearing will have to be held on  
23 January 16th -- I'm sorry, June, excuse me.

24 CHAIRPERSON REID: Let me clarify something. What do you  
25 consider yourself to be or what are you anticipating that your school will be?

26 DR. BOEK: What are we anticipating? That the school will be  
27 used for? Is that your question, ma'am?

1 CHAIRPERSON REID: Yes. The purpose of the school.

2 DR. BOEK: We are 32 years old and we have provided training  
3 for more than 28,000 people across the United States who are government officials  
4 and who are -- at one time we trained all the procurement officers, almost all of them  
5 for all of the universities

6 CHAIRPERSON REID: I don't want you to at this time get into  
7 the merits of your case. I just need to know before we proceed is it a university or  
8 college? In other words, is it a --

9 DR. BOEK: Yes, it will be.

10 CHAIRPERSON REID: Is it a higher education facility for post-  
11 high school education?

12 DR. BOEK: It will be higher education and we hope by next fall  
13 to have the graduate degrees underway.

14 CHAIRPERSON REID: Post high school mean that you have  
15 graduate and undergraduate --

16 DR. BOEK: They have to have Bachelor degrees. We have no  
17 undergraduate.

18 CHAIRPERSON REID: Oh, okay. So you're a graduate school,  
19 a graduate facility.

20 DR. BOEK: Excepting of course, we do do extensive training of  
21 people who need to learn English and computers and --

22 CHAIRPERSON REID: Those persons attending the school will  
23 be --

24 DR. BOEK: They don't need degrees.

25 MS. PRUITT-WILLIAMS: And the percentage of students --

26 DR. BOEK: Anyone can come to those.

27 MS. PRUITT-WILLIAMS: And what is the percentage of



1 students that would be coming to those versus the master's programs that you're  
2 hoping?

3 Is it a 50-50 split?

4 DR. BOEK: Five years from now it will probably be 50 percent or  
5 -- just about 50-50 because we are not a mass institution. You see, even our  
6 language classes, that's why we have such an international reputation, have only  
7 average of seven students.

8 CHAIRPERSON REID: You're not a what institution?

9 DR. BOEK: English and computer studies. Computers are six  
10 students.

11 CHAIRPERSON REID: What is your student population?

12 DR. BOEK: What is the student population? Now?

13 MS. PRUITT-WILLIAMS: Expected, within the next -- once you  
14 get your --

15 DR. BOEK: We're not sure how much of a need there is for the  
16 English and computer studies at this location on Capitol Hill, but if there is we would  
17 forecast that there would be about 75 students in English and probably about 21 in  
18 the computer studies, that is three classes of that.

19 CHAIRPERSON REID: But no more than a hundred students?

20 DR. BOEK: Pardon?

21 CHAIRPERSON REID: No more than a hundred?

22 DR. BOEK: She asked just about the language.

23 MS. PRUITT-WILLIAMS: Actually I meant the total.

24 CHAIRPERSON REID: Population.

25 DR. BOEK: And the graduate programs they start with 15  
26 students and there would be four sessions, th eyear, every three months so you've  
27 got actually 60 in each of the colleges. But the fact is that the time you go into the

1 second field and the third and fourth field, some of the ones that were in the first field  
2 are not there, so you have about an average of about 40 students in those colleges  
3 and that would be three of them.

4 MR. GILREATH: Well, could this come under some --

5 DR. BOEK: Of course, they're not there all at the same time  
6 either because they're there for three or four hours twice a week.

7 MS. PRUITT-WILLIAMS: Madam Chair, I would suggest that  
8 based on Dr. Boek's interpretation and in light of the Zoning Administrator's letter  
9 that we need to re-advertise this under university because it is conferring graduate  
10 degrees. It is not a school of higher learning that just confers certificates, but  
11 degrees which is a different entity and it needs to come under campus plan.

12 DR. BOEK: Less than 100 students.

13 MS. PRUITT-WILLIAMS: The number of students has nothing to  
14 do with it. It's the type of use.

15 DR. BOEK: Oh.

16 CHAIRPERSON REID: Okay, I think Mr. Boek that that is the --  
17 we have no other choice because the Zoning Administrator -- this is where I got a  
18 little confused because the Zoning Administrator had written saying that it was to be  
19 under Section 210 so I don't know how it got advertised under 206.

20 Will you answer that, please? When the Zoning Administrator  
21 had stipulated that it would be under Section 210?

22 MS. PRUITT-WILLIAMS: Correct.

23 DR. BOEK: How did it get advertised under 206?

24 MS. PRUITT-WILLIAMS: I believe that that's an interpretation  
25 that staff made in-house after talking with Mr. Boek, because he did not have all his  
26 information at that time had based on what they were told it was sounding like a  
27 private school. That's the best interpretation I can give. I've tried to track this down

1 and have not been able to get a clear answer.

2 CHAIRPERSON REID: Be that as it may, typically, the staff  
3 procedures would be predicated on what was directed by the Zoning Administrator.

4 MS. PRUITT-WILLIAMS: Correct.

5 CHAIRPERSON REID: Unfortunately, Mr. Boek, through no  
6 fault of your own, it was advertised under the wrong zoning regulation so we have to  
7 inform the public correctly as to exactly what you are going to be and the reason Mr.  
8 Schauer, a representative of the Capitol Hill Restoration Society is here is because of  
9 that confusion and to get some clarity. So what we have to do is to readvertise and to  
10 reschedule you for your hearing.

11 MR. GILREATH: Would he have to go through a full procedure  
12 for a full campus plan?

13 MS. PRUITT-WILLIAMS: Yes.

14 MR. GILREATH: Or just the small scale?

15 MS. PRUITT-WILLIAMS: He has to, he would have to meet the  
16 criteria of a campus plan. Now there really isn't a campus, it's a site, but as to what  
17 Mr. Schauer said if there's any future development, like in five years, in five years if  
18 they intend for their population to increase by 20, that needs to be indicated, those  
19 types of things. If they anticipate any expansion of the building that would need to  
20 be identified.

21 CHAIRPERSON REID: In other words, he would address the  
22 issue that are germane to --

23 MS. PRUITT-WILLIAMS: A campus plan, correct.

24 CHAIRPERSON REID: And although it would not be as  
25 elaborate --

26 MS. PRUITT-WILLIAMS: It may not be applicable, but they need  
27 to be addressed.

1 CHAIRPERSON REID: Just the salient points of it that would  
2 ahve to --

3 MS. PRUITT-WILLIAMS: And I would suggest Dr. Boek, you've  
4 already had some contact with Beverly Bailey of our office.

5 DR. BOEK: We already have and I think this is the answer right  
6 here.

7 MS. PRUITT-WILLIAMS: Well, talk with her again and hopefully  
8 we can help you, guide you in the right direction.

9 DR. BOEK: That was a Monday?

10 MS. PRUITT-WILLIAMS: Right.

11 DR. BOEK: So this is the plan they're talking about.

12 CHAIRPERSON REID: Okay, now given the fact that he has  
13 addressed this campus plan issue, how much time do you think you would need in  
14 order to do taht sufficiently?

15 MS. PRUITT-WILLIAMS: I don't know. That's something he  
16 would ahe to give us an idea on.

17 CHAIRPERSON REID: Are you familiar with that process for  
18 capus plan submissions?

19 DR. BOEK: Well, I met with the staff on Monday and --

20 MS. PRUITT-WILLIAMS: What I can tell you is that in order for  
21 this to be on the 16th genda, June 16th, it has to go to the Register next week, next  
22 Friday.

23 CHAIRPERSON REID: Is June 16th, adequate time for you?

24 MS. PRUITT-WILLIAMS: No, he would have to hve it in by next  
25 Friday.

26 CHAIRPERSON REID: No, I'm saying you told him it has to be  
27 in by next Friday.

1 MS. PRUITT-WILLIAMS: Correct.

2 CHAIRPERSON REID: I'm asking him is June 16th adequate for  
3 him, given the time constraints taht she's giving you?

4 DR. BOEK: We wouldn't need much time at all. I think we've got  
5 the work already done.

6 As far as the campus plan is concerned, I think we have it done  
7 already.

8 CHAIRPERSON REID: Okay, so that will be all right with you?  
9 You can meet those time lines?

10 DR. BOEK: Time lines, we don't need any length of time at all.  
11 We're out of the Capitol Hill District restoration area. I think it ends on 13kth Street  
12 and you represntt that society and we're outside of that.

13 As you know, the Neighborhood ADvisory Commission was very  
14 favorable towards this.

15 CHAIRPERSON REID: Let me address whether or not you're  
16 outside of his --

17 MR. SCHAUER: Culd I address that point?

18 CHAIRPERSON REID: Yes, please.

19 MR. SCHAUER: The Capitol Hill Historic District ends at 13th  
20 Street. This site is just beyond that. It is outside the historic district. However, the  
21 interst area of the society is much larger than the historic district. We claim an  
22 interest district that goes from the H Street on the north to the Anacostia River on  
23 the south and east, so clearly it's within this area. In fact, we would look upon this  
24 as being something rather close to the haert of Capitol Hill, so we are very interested  
25 in it as a civic association.

26 MR. GILREATH: The building is vacant now?

27 MR. SCHAUER: The building is undergoing renovation now by

1 Dr. Boek.

2 CHAIRPERSON REID: All right. Dr. Boek, the time frames --  
3 will you reiterate that for us, Ms. Williams?

4 MS. PRUITT-WILLIAMS: Yes. Staff would need something, a  
5 revised submission by at least Wednesday of next week so that we can make sure --  
6 or Thursday.

7 CHAIRPERSON REID: What does a revised submission consist  
8 of?

9 MS. PRUITT-WILLIAMS: A new application form because I don't  
10 want to amend the one we have. I'd like for him to fill out a new one.

11 CHAIRPERSON REID: June 16th would be --

12 MS. PRUITT-WILLIAMS: The hearing date. But he would have  
13 to have all of his information in so that the public would have access to it.

14 MR. GILREATH: It has to be readvertised.

15 MS. PRUITT-WILLIAMS: Right, it has to be readvertised, but it's  
16 a new case. If he's providing new information, that needs to be in the record so that  
17 once it's advertised the public has access to it.

18 CHAIRPERSON REID: And we then would review the campus  
19 plan?

20 MS. PRUITT-WILLIAMS: Correct. We would review it under the  
21 campus plan criteria.

22 CHAIRPERSON REID: All right. Dr. Boek, also I would suggest  
23 that you meet with, consult with staff so that they could assist you with putting  
24 together what your application and your case should be when you come back for  
25 your presentation.

26 DR. BOEK: Thank you very much.

27 CHAIRPERSON REID: Are there any other preliminary matters?

1 MS. PRUITT-WILLIAMS: Staff has others.

2 CHAIRPERSON REID: Okay.

3 MS. PRUITT-WILLIAMS: I believe it's -- excuse me, let me  
4 check.

5 (Pause.)

6 Madam Chair, if you could excuse me for one minute?

7 CHAIRPERSON REID: Sure.

8 (Pause.)

9 MS. PRUITT-WILLIAMS: Madam Chair, we can handle these at  
10 each case, so we call the first case and deal with it that way.

11 MR. HART: The first case is Application 16444 of St. Martin's  
12 Catholic Church/City Lights School, pursuant to 11 DCMR 3108.1, for a special  
13 exception under Section 206 to make alterations to a special education/alternative  
14 education school, and to construct an addition to the school to be used as a  
15 vocational arts building to train students in industrial arts, carpentry, etcetera. The  
16 property is located in an R-4 District at premises 62 T Street, N.E., Square 3531 and  
17 3532, Lots 824, 826 and 834.

18 MS. PRUITT-WILLIAMS: Madam Chair, staff has a preliminary  
19 matter regarding this case and if the Applicant could come forward?

20 The preliminary matter is that there was no -- we don't have in  
21 the file an affidavit of posting of the property and that is something we typically have  
22 before starting the hearing. And if the Applicant can indicate what happened and  
23 why they didn't --

24 MR. PETTIWAY: Yes, my name is Rob Pettiway. I'm the  
25 Director of City Lights School. And what we have is that because we are a tenant  
26 and the actual mailing from your office went to Father Kelly at St. Martin's Church  
27 and we were not apprised of that. We were informed by telephone about this

1 meeting, I didn't receive the documents.

2 MS. PRUITT-WILLIAMS: But on your application Father Kelly is  
3 the person who is listed to be notified?

4 MR. PETTIWAY: Yes, we understand that.

5 MS. PRUITT-WILLIAMS: I guess then the question is was the  
6 property posted?

7 MR. PETTIWAY: Not to my knowledge.

8 MS. PRUITT-WILLIAMS: Then we can't continue at this point.  
9 Usually, if the property is posted and you could insure that, the Board could make a  
10 decision, but the property was not posted at all. That's what we're finding out now.  
11 It needs to be posted for 14 days.

12 MR. PETTIWAY: If it's possible, is there -- do I have time to -- I  
13 haven't spoken to Father Kelly and when I arrived here this was the first notice.

14 MS. PRUITT-WILLIAMS: Right.

15 MR. PETTIWAY: Is it possible that I could take about 5 or 10  
16 minutes and call Father Kelly and make sure?

17 MS. PRUITT-WILLIAMS: You need to ask the Board that.

18 CHAIRPERSON REID: To make sure of what?

19 MR. PETTIWAY: Well, see, there are a lot of assumptions here.  
20 I said I have no knowledge of it being posted, but it could have.

21 CHAIRPERSON REID: Are you familiar with the property?

22 MR. PETTIWAY: With the policy?

23 CHAIRPERSON REID: The property itself?

24 MR. PETTIWAY: Yes.

25 CHAIRPERSON REID: The property located at --

26 MR. PETTIWAY: 62 T Street.

27 CHAIRPERSON REID: Yes.



1 MR. PETTIWAY: Yes, I am.

2 CHAIRPERSON REID: Did you see a sign, an orange -- one of  
3 our posters on teh building itself?

4 MR. PETTIWAY: No.

5 CHAIRPERSON REID: At any time?

6 MR. PETTIWAY: No.

7 CHAIRPERSON REID: And you would be well enough  
8 acquainted with it to know if one had been erected there?

9 MR. PETTIWAY: Yes. If it was there, I would --

10 CHAIRPERSON REID: That is what the issue is, the fact that  
11 there was no posting which is required prior that there be in addition to be submitted  
12 and advertised in the D.C. Register, that 200 notices go out to persons living within  
13 200 feet of the property --

14 MR. PETTIWAY: Yes.

15 CHAIRPERSON REID: As well as that the property be posted  
16 for the public to be aware of the fact that there is a hearing today.

17 So without that we have to reschedule you.

18 MR. PETTIWAY: Okay.

19 MS. PRUITT-WILLIAMS: Let's see. Our schedule,  
20 unfortunately, is very tight. And you only need 15 days for posting, but that does --

21 CHAIRPERSON REID: Refresh my memory. Has the Board  
22 ever given the fact that there has been notice given in the other methods, allowed  
23 the case to proceed or does it have to be posted?

24 MS. PRUITT-WILLIAMS: I would suggest it would be posted.  
25 You can postpone the hearing and not have to re-advertise, but it is advertised  
26 correctly and then anyone who is here will then be allowed to testify at the next  
27 hearing and you can postpone it and allow them the 14 or 16 days so we can make

1 sure everything is up there, post it, and put them on the next agenda.

2 However, our agendas are so tight, that's what I'm trying to look  
3 at now. We are on the 7th and the 14 would put it on the 21st which is a very tight  
4 agenda. I think that probably the next best date to be fair to everybody would be to  
5 put it behind a special -- behind a public meeting on Wednesday, the 5th in May in  
6 the morning.

7 CHAIRPERSON REID: Would that work for your schedule?

8 MR. PETTIWAY: That's fine. Yes, because it's my  
9 understanding they want to start in the fall.

10 CHAIRPERSON REID: You'll have time. All right, then that  
11 being the case then the 5th of May will just delay it about a month. Is that --

12 MR. PETTIWAY: That's doable.

13 CHAIRPERSON REID: That's doable for you.

14 MS. PRUITT-WILLIAMS: I just want you to know you won't  
15 receive a notice or any notification that this has been postponed until the 5th of May.  
16 This is your notification, okay?

17 What you can do is go to the office next door and have someone  
18 helping you with getting the placards because you have to post them on all four  
19 sides of your property.

20 MR. PETTIWAY: Okay.

21 CHAIRPERSON REID: And also, sir, you submitting your  
22 application under Section 206. You need to look at the zoning regulations and then  
23 be able to defend when you put on your case how you comply with the sections of  
24 206, Regulation 206.

25 MR. PETTIWAY: 206.

26 CHAIRPERSON REID: There are several items that you must  
27 comply with, each one of them and let us know that you have met your burden for

1 the relief that you are requesting.

2 MR. PETTIWAY: Okay.

3 CHAIRPERSON REID: Staff will also help you with that as well.

4 MR. GILREATH: This delay is not going to cause any problems  
5 -- perhaps the Catholic Church will finance it, but if it causes problems to delay it  
6 until May you will not be adversely affected if the hearing comes in May?

7 MR. PETTIWAY: No, I don't think so.

8 MR. GILREATH: It won't be a problem, okay.

9 MS. BAILEY: Madam Chair, just to reiterate, the gentlemen at  
10 the table need to submit their names and correct address so when the order is  
11 published or additional material, it will go to them directly rather than to the person  
12 that's identified on the application.

13 MS. PRUITT-WILLIAMS: I would just also suggest you check  
14 with Father Kelly to make sure whatever goes, that he then forwards it to you.

15 MR. PETTIWAY: I will.

16 MS. PRUITT-WILLIAMS: So we don't have to amend.

17 MR. PETTIWAY: Okay.

18 MS. PRUITT-WILLIAMS: Thank you.

19 MR. PETTIWAY: Thank you.

20 MR. HART: Third case, Application 16446 of DRM and  
21 Associates, Inc., pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception  
22 under Section 205 to allow a child development center for 50 children, infant through  
23 12 years and 9 staff, and a variance from the off-street parking requirements  
24 (Subsection 2101.1) in an R-4 District at premises 728 F Street, N.W. (Square 981,  
25 Lot 49.)

26 MR. MADDEN: Good afternoon, I'm Donald Madden.

27 MR. HART: Please step up here, please.

1 (Witnesses sworn.)

2 MR. MADDEN: My name is Donald Madden, I'm the owner of the  
3 child development center and DRM and Associates, I'm the President.

4 CHAIRPERSON REID: Your address, please, sir?

5 MR. MADDEN: Address of the premises is 728 --

6 CHAIRPERSON REID: Your address.

7 MR. MADDEN: Oh. 243 K Street, N.W. That's my office, Suite  
8 2, D.C. 20002.

9 CHAIRPERSON REID: Okay, go ahead.

10 MR. MADDEN: I was told by the staff to request that two  
11 documents be accepted by the Board, one being a document with a late submission  
12 by the Capitol Hill Restoration Society. I've made the copies and I'd like for that to  
13 be presented. And in order to expedite the hearing, I have written comments in  
14 response to the comments submitted by two opposing parties.

15 CHAIRPERSON REID: Okay.

16 MS. BAILEY: YOU need to ask that your statement with the  
17 photographs be also accepted into the record.

18 MR. MADDEN: Yes. I had previously submitted to the staff a  
19 statement with photographs and they have that somewhere, I think up there, that  
20 I'd like to be also admitted.

21 Do I just give those to -- thank you. She has those.

22 MR. GILREATH: Madam Chair, is the issue here he's presently  
23 a child development center and wants to increase the enrollment?

24 MR. MADDEN: May I answer that?

25 CHAIRPERSON REID: yes.

26 MR. MADDEN: No, we're not trying to increase the enrollment.  
27 We're just trying to continue under the current variance that we were issued.

1 MR. GILREATH: How many students do you have now or  
2 children?

3 MR. MADDEN: We're approximately 36, but we are zoned for  
4 50 and we have infants which cuts down on the space which has nothing to do with  
5 the zoning as I understand. The capacity for the building is 50 and 9 staff is what I'm  
6 asking to continue.

7 MR. GILREATH: So it's only a continuation. It was a 5-year  
8 time frame or something?

9 MR. MADDEN: Right.

10 MR. GILREATH: And you're reporting back. Well, the ANC, do  
11 they have any problems with the operation?

12 MR. MADDEN: I appeared before the ANC and basically the  
13 operation of the center was never in opposition. There was an opposition that  
14 arose during the hearing of a parking lot, approximately 9 to 12 blocks away that I  
15 had gotten permission to establish a lot into a parking lot and over the period of time  
16 there was some delays, several times I had to appear before the Board before I got  
17 an approval and after I received approval, it was winter time. Then financial  
18 difficulties and I could not at that time turn it into a parking lot as I had hoped, but my  
19 intentions are still to do that. But that issue has nothing to do with this center as I  
20 perceive it. It's 12 blocks away. That's another issue.

21 MR. GILREATH: Well, do you have adequate parking now with  
22 the requirements for parking?

23 MR. MADDEN: Yes, same requirements that was allowed by the  
24 Board before still exist as I have in a letter there. I control the parking and also the  
25 basement of the unit which is in the next block.

26 MR. GILREATH: Do you anticipate your enrollment going to 50  
27 or do you think it will stay basically --

1 MR. MADDEN: I don't anticipate it at this time increasing  
2 because I have infants and that's one of the issues of contention that surfaced  
3 during some written comments put into the files.

4 Each year it's a requirement for licenses to inspect and issue a  
5 license along with the requirements for the Fire Department to inspect, etcetera.  
6 And at that time the change of number of children is subject to change, depending  
7 on age. If I bring in more infants, it requires less child to be able to enter the  
8 property. I can go up to 50 as originally designed, but as I bring in more infants, the  
9 number of children would decline for the capacity of the building and there's some  
10 misunderstanding by the person that submitted that. We've gone through this before  
11 with Mr. Nunley and Acting Chief of the Zoning Office and I thought it was cleared up  
12 and why it surfaced again now, I don't understand. I think it's questionable because  
13 they clearly explained to Ms. Fatah that the licensing controls each year based on  
14 the number of infants and type of child that's in the center as to how many goes on  
15 the license. The zoning as explained by Mr. Nunley and Ms. Hicks I think at that  
16 time that it would be burdensome for the Board each time I change a child, have to  
17 come back before the Board of Zoning hearing to change one child and they said  
18 that's done through licensing.

19 MS. PRUITT-WILLIAMS: Excuse me, Dr. Madden, but then is it  
20 your -- what you're saying is you have no more than 50 children in there?

21 MR. MADDEN: No more.

22 MS. PRUITT-WILLIAMS: But you may have less?

23 MR. MADDEN: I can always have less.

24 MS. PRUITT-WILLIAMS: Right.

25 MR. MADDEN: As I understood it.

26 MS. PRUITT-WILLIAMS: And that is what your previous order  
27 CFO allowed?

1 MR. MADDEN: Right.

2 CHAIRPERSON REID: Well, do you know how many children,  
3 okay, you're asking for an increase?

4 MR. MADDEN: No ma'am.

5 MS. PRUITT-WILLIAMS: No.

6 CHAIRPERSON REID: No increase?

7 MR. MADDEN: No increase. I want to stay the same.

8 MR. GILREATH: Continuation.

9 MR. MADDEN: Stay the same. I just want to continue. I think  
10 we're doing an excellent job of educating children.

11 CHAIRPERSON REID: Okay. You want to continue but the  
12 current order allows you to add up to 50 children?

13 MR. MADDEN: No ma'am. The current order -- let me explain.  
14 This building was purchased some years ago. It has been vacant ever since the  
15 riots of 1968, it's been sitting there. I purchased it and renovated it into a day care.

16 CHAIRPERSON REID: Right.

17 MR. MADDEN: So from the beginning it was constructed,  
18 inspected and approved by all authorities from construction through licensing and  
19 everyone and presented for the Board of 50 children and 9 staff. That was my max  
20 capacity from the beginning. I am not asking for any changes from the max  
21 capacity. I would like for that to stay the same at this time.

22 I have some space that I hopefully will be able to build out  
23 because there's a great demand for infants and even building out that space, if I  
24 make the whole first floor infants, it will reduce the number of children and the  
25 capacity for the build out would not necessarily increase the number of children over  
26 50.

27 MR. GILREATH: You said a build out. Are you talking about

1 adding numbers or actually putting an addition on to your present structure? I'm not  
2 sure waht you mean by build out.

3 MR. MADDEN: Actually, I have -- I don't know if they gave you  
4 the pictures or not, but on top of one of the floors is a flat area that I could build out  
5 and make that into another room or two.

6 MR. GILREATH: But you'd have to come back to the Board for  
7 that, I think. Wouldn't that be a differetn action? Right now you really want -- you've  
8 been operating this and presumably there was a time limit and you're reporting  
9 bacck saying if presuming the neighborhood has no objections, you'd like for us to  
10 approve further continuation of this?

11 MR. MADDEN: Continuation, that's all.

12 MR. GILREATH: The build out presumably would occur at some  
13 later time at which time you'd come back to the Board, assumising it was not a  
14 matter of right.

15 MR. MADDEN: Right.

16 MR. GILREATH: If it ws a matter of right, you could go ahead  
17 and build it, but otherwise you would come back and we would consider that.

18 MR. MADDEN: Right.

19 MR. GILREATH: Madam Chair, I don't see any problems.

20 MR. PARSONS: Well, we seem to have a problem with the  
21 Advisory Neighborhood Commission and Mr. Madden went to a meeting and  
22 apparently was interrupted in the middle of his presentation and somebody took over  
23 and had some misinformation. Maybe you could tell us more about this.

24 MR. MADDEN: I don't know if it was misinformation. It ws a  
25 concern, as I previously stated, that BZA, the Board gave me authorization to turn a  
26 lot on 17th Street and Benning Road into a parking lot which on hindsight, if I had  
27 thought about it, I coud have probably gone under the grandfather clause because



1 the lot had been used for more than 20 years for parking and I've owned it for  
2 probably 16 years or so, but I didn't think about it at the time. But I came before the  
3 Board and asked for permission to turn it into a parking lot.

4 MR. PARSONS: That was five years ago?

5 MR. MADDEN: No, that was last year. I think it was last year I  
6 got the permission to turn it into a parking lot.

7 MR. PARSONS: All right.

8 MR. MADDEN: Before the winter, because I had to come back  
9 before the Board several times and give additional information and do renovation, I  
10 mean modification to the plan that the Board requested so over a period of time  
11 after appearing about three times I received approval to put the parking lot there.  
12 But during that time period afterwards, winter, financial difficulties did not allow me to  
13 do what I intended to do with the lot. So the lot sits there and anywhere in the city it  
14 becomes a dumping ground which I try to keep it clean and the city comes by and  
15 fines me and when I don't clean it on a regular basis, I try to get down there at least  
16 once a month to try and clean it off and I think we've done a halfway decent job of  
17 keeping it clean, but that's what the issue was with ANC is that lot, not the daycare  
18 center which I feel is like apples and oranges. We're dealing with children versus a  
19 parking lot.

20 MR. PARSONS: But you do have an order from this Board that  
21 says you're supposed to operate it as a parking lot.

22 MS. PRUITT-WILLIAMS: No.

23 MR. PARSONS: No?

24 MR. MADDEN: I have an order that I can turn it into a parking  
25 lot.

26 MR. PARSONS: Not that you must, but that you can?

27 MR. MADDEN: Yes, right.

1 MS. PRUITT-WILLIAMS: From our Board?

2 MR. MADDEN: Right. I came in and asked for permission to --

3 MS. PRUITT-WILLIAMS: Do you have the number of the order,  
4 sir? Staff is now pulling the order cited from teh Zoning Administrator in reference to  
5 the daycare center.

6 MR. MADDEN: I'm sorry now?

7 MS. PRUITT-WILLIAMS: We have just gotten -- this is the  
8 property at 8th and F that's for a daycare center?

9 MR. MADDEN: That's correct.

10 MS. PRUITT-WILLIAMS: And we can give this to the parties too,  
11 a copy of the Board's order approving this in 1991 and you're coming back for  
12 renewal of this?

13 MR. MADDEN: Right, they have that, I believe that, already.

14 I have that here, I believe, Your Honor.

15 MS. PRUITT-WILLIAMS: But the case before us today is only  
16 the daycare center, is that correct?

17 MR. MADDEN: That's correct. I didn't bring it with me to  
18 prepare to --

19 MS. PRUITT-WILLIAMS: That's all right. We have a copy for  
20 them. We can get you one too.

21 MR. PARSONS: For the community, at least the ANC is  
22 opposing you unanimously because of your noncmpliance with this parking lot  
23 issue and your testimony is well, you don't really need a parking lot because nobody  
24 drives to your daycare. That is your answer to these questions is that you don't  
25 need parking.

26 MR. MADDEN: Sir, the parking lot we're talking about is 12  
27 blocks from teh daycare center. It has no relationship to the daycare center at all,

1 none whatsoever.

2 I have a parking space near the daycare center that was  
3 approved by the Board for me to use complying with the Board's order, since I still  
4 have control of it. I own a building on the corner of 9th and F. I control the parking.  
5 I control the basement unit.

6 MR. PARSONS: So the ANC or some members of the ANC are  
7 trying to punish you because you didn't do anything about a different subject and  
8 trying to put you out of business before us because of that, is that it?

9 MR. MADDEN: Exactly, sir.

10 MR. PARSONS: That may be a little crudely put, but now I'm  
11 getting the point.

12 MR. MADDEN: Right.

13 MR. GILREATH: And so the parking lot was a different action  
14 you came before the Board on a different occasion with a different submission?

15 MR. MADDEN: Different occasion several times to get it  
16 approved and after, I think, the third time, it was approved.

17 MR. GILREATH: And it was a separate application?

18 MR. MADDEN: Separate application all together, sir. It's 12  
19 blocks away. It's on the corner of 17th and Benning Road.

20 My daycare center is on the corner of 8th and F, N.E.

21 CHAIRPERSON REID: I'm confused. The Board order gave  
22 you a maximum of 50 children.

23 MR. MADDEN: And 9 staff.

24 MR. GILREATH: And Capitol Hill Restoration Society has  
25 supported your application?

26 MR. MADDEN: That's correct. I went there and got a chance to  
27 present the whole facts of what we're doing and the success we're having at the

1 center and I said if we have a female President in our lifetime she would have  
2 graduated from Tender Love.

3 (Laughter.)

4 I have produced what I think at least several genius children to  
5 walk out of that center and --

6 MR. GILREATH: You're keeping tabs on them?

7 MR. MADDEN: Oh yes. The mother and father of one child, I  
8 know you want to get out of here, I'll be brief. She was so bright and had such a  
9 nice personality, if a child had difficulty in catching on she would take over the class  
10 as the teacher would let her. She could teach them in no time. She was great, but  
11 both of her parents, everywhere we went, every trip we went on, every activity we  
12 had at the center, both parents would take off from work and go with that child. And  
13 I told them I want to know this history as long as I'm alive, I want to track her,  
14 because she's very bright. I had three almost in that category and --

15 CHAIRPERSON REID: Okay, now a provision under which  
16 were granted first, your first order was granted to you had certain conditions,  
17 correct?

18 MR. MADDEN: All of those have been met and continue to be  
19 met.

20 CHAIRPERSON REID: All those conditions were met and  
21 continue to be met in regard to the number of children, no more than 50. The drop  
22 off and pick up. Now that was one of the issues that came up in some of the  
23 adverse impact complaints.

24 Has there been a problem with the drop off and pick up?

25 MR. MADDEN: Let me address that. I addressed that in my  
26 letter, but I'd like to explain.

27 CHAIRPERSON REID: Okay.

1 MR. MADDEN: The Board in its order asked that I contact  
2 Parking-Planning to come out and do a survey to put a loading zone sign in front of  
3 the center. I did that. They came out several times during the morning unloading,  
4 evening with the pickup. Came back to me and said Mr. Madden, we do not see a  
5 need for a loading zone. There is no traffic problem, so we don't consider that being  
6 necessary.

7 Even though I wanted it, they said it's not necessarily and I didn't  
8 pursue it any further because they came out adn they did their job and they  
9 responded.

10 CHAIRPERSON REID: Are the hours of operation still 7 a.m. to  
11 7 p.m.?

12 MR. MADDEN: We do that when we have the summer program,  
13 we stay open a little later.

14 CHAIRPERSON REID: Not to exceed 7 a.m. to 7 p.m.

15 MR. MADDEN: No, we don't exceed it.

16 CHAIRPERSON REID: The parking. The trash.

17 MR. MADDEN: We prepared a bin and we use that bin for the  
18 trash. There's no problem.

19 CHAIRPERSON REID: You're in compliance?

20 MR. MADDEN: We're in compliance. We have the pictures  
21 there and the previous pictures in the back of the order there, you'll see that we've  
22 done I think an improvement in the building and continue to do an improvement and  
23 I'm going to put a fence around it like I did 600 9th Street, N.E. if anybody has an  
24 occasion to drive past there. It's a real attraction to the community.

25 CHAIRPERSON REID: Okay, we talked about the parking.  
26 Outdoor play space is adequate?

27 MR. MADDEN: We have adequate space. We have three

1 schools in the area for playgrounds that we have permission to use.

2 CHAIRPERSON REID: What about -- do you know what the  
3 status of other child development centers are within 1,000 feet of your facility, what  
4 the status of their location is?

5 MR. MADDEN: Do I -- I'm sorry?

6 CHAIRPERSON REID: Let me rephrase it. Are there any other  
7 daycare centers that have been added in the interim from the time you've been here  
8 within 1,000 feet of your center, to your knowledge?

9 MR. MADDEN: I couldn't say. I think some have been added. I  
10 don't know how close they are.

11 They're not really competitive to us because I think there's  
12 enough children, demand for day care in the city to go around.

13 CHAIRPERSON REID: How many children do you have?

14 MR. MADDEN: Thirty-six now.

15 CHAIRPERSON REID: Their ages?

16 MR. MADDEN: Infants to 5 years of age.

17 CHAIRPERSON REID: Okay.

18 MR. MADDEN: We lost some of the children because of the  
19 new programs. They can go into the school system at an early age now.

20 MR. GILREATH: Looking at the insert, I understand that what  
21 they're wanting is for him to be required to reduce the number of children to only 15.  
22 As a matter of right there should be no BZA communication adjustment to go  
23 beyond that.

24 CHAIRPERSON REID: I did see that, however --

25 MR. GILREATH: YOU don't have to agree with that, but that's  
26 what they're asserting. BZA should, given the special exception, they should go  
27 there as a matter of right and have 15 children there. CHAIRPERSON

1 REID: Okay.

2 MR. MADDEN: Do I need to respond to that?

3 CHAIRPERSON REID: Now, Dr. Madden, you're asking for a  
4 special exception, not a variance, right? You're asking to continue the special  
5 exception?

6 MR. MADDEN: Correct.

7 CHAIRPERSON REID: Because in your letter you stipulate a  
8 variance. That's one thing.

9 MR. MADDEN: I'm sorry.

10 MS. BAILEY: Madam Chair, the application reads that it's a  
11 special exception and a variance.

12 MS. PRUITT-WILLIAMS: He's a variance for parking.

13 CHAIRPERSON REID: The special exception is what you're  
14 asking for the continuation of the daycare child development center.

15 MR. MADDEN: And the variance.

16 CHAIRPERSON REID: And then also, I see, he wants a  
17 variance for the parking.

18 MR. MADDEN: That's right.

19 CHAIRPERSON REID: I got it. I got a little confused there  
20 because it didn't say -- in your letter you didn't mention special exception.

21 MR. MADDEN: I'm sorry.

22 CHAIRPERSON REID: In your application it was mentioned.

23 Any other questions?

24 MR. PARSONS: I guess we better deal with the letter that they  
25 received, memo received from Helen Young Fatah. And Mr. Madden has  
26 responded to that.

27 She is claiming, I guess, or stating that this facility is licensed or

1           only has the capacity for 29.

2                           CHAIRPERSON REID: Oh.

3                           MR. PARSONS: And she looks at that from a licensing  
4           perspective, whereas Mr. Madden has 36 currently. Is that correct?

5                           MR. MADDEN: Let me try to better phrase what I said earlier in  
6           regard to her comments. We've gone through this once before with Office of Zoning,  
7           which is Office of Zoning intervening on my behalf to explain to Ms. Fatah the rulings  
8           and regulations of Zoning and explaining to her that what's done here is giving me a  
9           max. capacity for that facility which was granted, 50 children and 9 staff. Because I  
10          decided to put infants, my licensing is reflective of the space because with infants  
11          the space requirement is greater, therefore reducing the number of children on the  
12          premises at that time which can be a temporary situation.

13                          The Board of Zoning gave me authority for a period of time to  
14          allow me to have 50 children. If I decide tomorrow I'm going to put 50 children in  
15          there, I don't have to go through anything, come back before the Board. I have that  
16          authority already.

17                          MR. PARSONS: Right.

18                          MR. MADDEN: Each year, Licensing inspects, along with the  
19          Fire Department and everybody and his brother comes around now checking day  
20          care. So at that time, the measurements are done and whatever and number of  
21          infants I may have versus the number of pre-schoolers and so forth are calculated  
22          and on the license it tells me what I'm allowed to have for that year.

23                          The next is subject to change again and I'm trying to emphasize  
24          the Board of Zoning Office tried to explain to Ms. Fatah at that time that if I take and  
25          change an infant and come back before BZA, your job would be hearing me every  
26          time we decide to change an infant because the number will change.

27                          MR. PARSONS: I concur with that and I just wanted to make



1       sure that was on the record.

2 MR. MADDEN: Thank you.

3 CHAIRPERSON REID: Okay, and along the same line you said  
4 you have 36 children. What's the breakdown of infants and --

5 MR. MADDEN: I have 10 infants and the rest are --

6 CHAIRPERSON REID: Twenty-six children?

7 MR. MADDEN: I believe that's correct.

8 CHAIRPERSON REID: Mr. Parsons says that you have the  
9 capacity for 29 children and 10 infants so that would be below the number. You  
10 have a total of 36 with 10 infants and -- 26 children. And it says you have space here  
11 for 29 children and 10 infants. So that means that you were in keeping within your  
12 licensing requirement, will it not?

13 MR. MADDEN: They won't allow me to go over my license  
14 requirement.

15 CHAIRPERSON REID: So you're fine?

16 MR. MADDEN: I'm fine. I can't go over the zoning and I can't go  
17 over the license requirement, but I can go over the license requirements if I decide  
18 to go back to what Zoning authorized me to do without having to come back before  
19 BZA and that's what she's trying to say, that I need to come back to the BZA  
20 because of the licensing. I wasn't able to convince her, obviously. That's the ruling  
21 that Zoning informed her of.

22 CHAIRPERSON REID: What aobut the parking?

23 MR. MADDEN: The parking?

24 CHAIRPERSON REID: The parking.

25 MR. MADDEN: Parking conditions that existed in the beginning  
26 still exist.

27 CHAIRPERSON REID: You provide --

1 MS. PRUITT-WILLIAMS: Could you just identify those?

2 MR. MADDEN: Yes, I don't know if you're familiar with on the  
3 corner of 9th and F is the Charity Baptist Church. I bought that building maybe a  
4 year before I bought the daycare center and I renovated it into a luxury house with a  
5 basement unit. In that there's a garage and two outside parking spaces which I  
6 control the parking and the basement because we use it to teach children to play  
7 around on computers, we've got computers in the basement and it's there for  
8 parents to come around. We have our meetings there, the parents meeting and we  
9 have whatever little functions we have for the parents and the staff, we have it in the  
10 basement. So I control that. I lease the upstairs out and I control that area.

11 Did I answer your question? I'm sorry.

12 MR. GILREATH: You are providing off-site parking?

13 MR. MADDEN: That's right. I have that agreement with the  
14 person that lives there and understands that I still control it and I own the building.

15 CHAIRPERSON REID: And the reason why you need a  
16 variance is because --

17 MS. PRUITT-WILLIAMS: The regs. require it.

18 MR. GILREATH: Self-site parking.

19 MR. MADDEN: Right, for the number of staff it requires me to  
20 have parking.

21 CHAIRPERSON REID: The reason why you think you should be  
22 given the variance is because?

23 MR. MADDEN: The demand for educating our children in this  
24 city is such a significance that I think it's appropriate that we try to educate as many  
25 children as we can.

26 CHAIRPERSON REID: Right, right, but what you need to do -- I  
27 didn't mean to cut you off, but you need to meet your burden of proof for obtaining a

1 variance and that is that you have to demonstrate that you have something unique  
2 or different about your property that wouldn't enable you to comply with existing  
3 zoning regulations.

4 MR. MADDEN: I'm sorry. This was, as I said before, an old  
5 building that was sitting vacant all this time, to my knowledge.

6 On the premises before there was a parking curb cut and where  
7 the entry room is I think at one time it was possibly a garage. There is no curb cut  
8 there any longer even though going down the street further by the church and so  
9 forth people still use that public space to park on.

10 I chose not to try and get a curb cut in the part there because it  
11 would be too close to the building, frankly, I think. So based on the construction and  
12 going through the zoning process and the application and so forth they said I  
13 needed to have off-site parking which I already had at the building at 600 9th Street  
14 and that's what I presented as off-site parking facility because the building I have is  
15 on the corner and would not accommodate parking and that was allowable.

16 CHAIRPERSON REID: Are you referring to the building that's  
17 12 blocks away.

18 MR. MADDEN: No, one block away. The building I own for the  
19 parking is on 9th and F. That's where the parking is.

20 CHAIRPERSON REID: Which parking?

21 MR. MADDEN: For my daycare center.

22 CHAIRPERSON REID: Okay.

23 MR. MADDEN: My daycare center is on the corner of 8th and F.

24 CHAIRPERSON REID: Okay, so you are providing parking?

25 MR. MADDEN: I am providing parking, right. I always have.

26 CHAIRPERSON REID: Why do you need a variance.

27 MR. MADDEN: It's off-site.

1 MS. PRUITT-WILLIAMS: He has to provide off-site parking for a  
2 daycare center. His particular site cannot accommodate it so he's providing it off-  
3 site at a building somewhere else.

4 CHAIRPERSON REID: I got you because he couldn't provide on  
5 the site. I understand that. I just got a little confused there.

6 Okay, so was there any -- to your knowledge was there any  
7 adverse impact as a result of your being granted a variance?

8 MR. MADDEN: None whatsoever.

9 CHAIRPERSON REID: As to parking or to traffic or to noise or  
10 to any of those things?

11 MR. MADDEN: No. During the hearing and the initial hearing  
12 that we had before the BZA, I had a person come in and object and he objected  
13 because he compared the laughter of children playing to dogs barking and  
14 everybody here laughed him out and he got upset and ran out. So -- but believe it or  
15 not I saw him down several times being cooperative now and picking up trash maybe  
16 in front of the building, maybe some paper or something. I think he's found out that  
17 we are an asset rather than a liability to the community.

18 CHAIRPERSON REID: Are you familiar with the letter from Mr.  
19 Attaway who opposes your application and the contention is that there's a shortage  
20 of street parking?

21 MR. MADDEN: Attaway?

22 CHAIRPERSON REID: Yes, that granting the relief that you're  
23 asking for would cause difficulty with regard to parking?

24 MR. MADDEN: I'm sorry. I checked the records yesterday. I  
25 didn't see that in the files.

26 CHAIRPERSON REID: It's dated April 1st. You're not familiar  
27 with the letter?

1 MR. MADDEN: No ma'am. I looked thorough the files and only  
2 two positions I saw was the two that I commented on.

3 MR. GILREATH: I don't have it in my folder either. It was  
4 received April 5th.

5 MS. PRUITT-WILLIAMS: It was received April 5th. Staff goes  
6 thorough the in-box and pulls it. It has not actually gotten in the file. I can provide it  
7 quickly.

8 MR. MADDEN: In that case it's untimely permitted, is taht  
9 correct?

10 MS. PRUITT-WILLIAMS: The record is open until the hearing is  
11 closed. So it's not a timely issue at all.

12 MR. MADDEN: Okay. I think I commented briefly about parking  
13 earlier. The parking surveys were done before approval for the daycare center. The  
14 spaces, the vaccant spaces around there existed then. They continue to exist. I'm  
15 at the center at least twice, almost every day and there's never a problem in parking  
16 around the facility.

17 As a matter of fact, across the street, the entire, the whole, all  
18 the way down to the alley is unlimited time parking becuase it's all businesses  
19 across the street from teh daycare. So this is not adequate assessment of what the  
20 parking situation is there. It's not a problem and never has been a problem as  
21 verified by the District.

22 CHAIRPERSON REID: Any other questions?

23 All right, thank you very much.

24 MR. PARSONS: I did have one. Mr. Madden, there's a map in  
25 the file here. I guess you're familiar with that map. It shows your property and the  
26 Office of the Surveyor, it's his map and it seems to be dated 1978, but I'm not sure  
27 about the date. And you spoke earlier about a curb cut which is shown on this

1 drawing and it shows access to what appear to be three parking spaces. I'm not  
2 sure I understood -- there may be two parking spaces, but nevertheless, you said the  
3 street curb cut had been closed or didn't exist.

4 MR. MADDEN: Which property are you speaking about?

5 MR. PARSONS: You better look at the map then. What I'm  
6 anxious to know about is what is the status of those parking spaces? You can  
7 return and take that with you. This is the property that the daycare center sits on,  
8 isn't it?

9 MR. MADDEN: I'm trying to see. Yes, it is.

10 MR. PARSONS: You see the two or possible parking spaces  
11 they're showing?

12 MR. MADDEN: Okay, there's no curb cut. It says existing curb  
13 at the bottom.

14 MR. PARSONS: Yes.

15 MR. MADDEN: So it's not cut.

16 MR. PARSONS: So there's no -- the drawing is inaccurate?

17 MR. MADDEN: Right.

18 MR. PARSONS: That's what I want to make sure of because it  
19 appears in this drawing which is in our file without commenting on it that you've got  
20 at least two parking spaces on the property and that's not the case.

21 MR. MADDEN: That's not the case.

22 MR. PARSONS: Thank you.

23 MR. MADDEN: As I said earlier, this building has been sitting  
24 here for years and previously there may have been sometime in the initial  
25 construction as parking, but as it is now I think that possibly could have been a  
26 garage.

27 MR. PARSONS: Thank you.

1 MS. BAILEY: Mr. Madden, the last order 15456, is that you last  
2 order on this site, Application No. 15456?

3 MR. MADDEN: I don't know the number. It possibly is.

4 MS. BAILEY: That was approved in 1991?

5 MR. MADDEN: That's correct.

6 MS. BAILEY: Okay. It says here that the last condition No. 9,  
7 "approval shall be for a period of three years, that's three years from August 16,  
8 1991. It's now 1999."

9 MR. MADDEN: Right, that was an oversight by me and talking  
10 with Mr. Nunnally, his office as well and Licensing which come out every year and  
11 inspects and nobody ever -- that never surfaced. That was an oversight on our part.  
12 When I saw Mr. Nunnally in the office one day I was doing some other business there  
13 and he called me in and said you need to come in and fill out another application. I  
14 said okay, no problem. I filled it out the next day.

15 CHAIRPERSON REID: Mr. Madden, once you get the order it's  
16 incumbent upon you to make sure that you're in compliance. The time frames which  
17 you've been granted --

18 MR. MADDEN: I understand and I apologize to the Board, but  
19 that was just an oversight.

20 CHAIRPERSON REID: What assurance do we have that if, in  
21 fact, your special exception for variance is granted today that you will be in  
22 compliance with the order should we give you a term of 3 years or whatever?

23 MR. MADDEN: I assure you it won't happen again.

24 CHAIRPERSON REID: What are you going to do to make sure  
25 it doesn't happen again?

26 MR. MADDEN: I'm going to make sure it's posted in the center  
27 so I have other people other than myself to remind me of it and it will be there for the

1 inspectors when they come through to be able to see it without having to go into the  
2 files or go somewhere and look for it.

3 At the same time, in my letter I requested 20 years because of  
4 the loan I anticipate getting to do an additional improvement to the center so I can  
5 better serve the children and I hope the Board would accommodate that period of  
6 time for me and I think we can do an excellent job in better serving the city.

7 I have been in this city as a developer for 21 years and I have  
8 properties that have been sitting since the riots. My office, as a matter of fact, is at  
9 243 K Street, I bought have been sitting since the riots. I bought it and renovated it  
10 into an office, a carry out. I've bought buildings on 16th Street that I've renovated,  
11 turned into homes for the veterans which was a grant there from HUD that's housing  
12 homeless veterans. I've done a number of houses in Northeast and Northwest and I  
13 anticipate doing a senior citizens home in the future. So I am, I would think, an  
14 asset to this city to make improvements. I buy dilapidated properties and renovate  
15 them and turn them into positive tax revenue for the city. And I recommend if you  
16 want to come to the daycare center and see waht we've done to that old dilapidated  
17 building as well as the one on the corner of 9th and F Street, N.E. And I will  
18 continue to make sure that what happened in the past will not happen again, to  
19 make sure whatever time you give me I'll be back before you to ask for continuance  
20 becuase I love children and I plan to keep this daycare center going.

21 CHAIRPERSON REID: Okay. Any other questions?

22 MR. GILREATH: Are we going to hear testimony from anyone  
23 else? No questions.

24 CHAIRPERSON REID: Thank you, Mr. Madden. Okay now, do  
25 we have government reports? ANC? We had -- I'm sorry, I'm sorry. Cross  
26 examine.

27 The ANC Commissioner, that is, is the ANC Commissioner



1 here?

2 MR. FERRELL: 6A.

3 CHAIRPERSON REID: This is 6A. So you may come nad cross  
4 examine.

5 MR. GILREATH: Identify yourself for the record.

6 CROSS EXAMINATION

7 MR. FERRELL: My name is Commissioner Gregory Ferrell,  
8 ANC6A.

9 I represent single member district 6A-12.

10 CHAIRPERSON REID: YOu can sit there.

11 MR. FERRELL: I can sit?

12 CHAIRPERSON REID: Sure.

13 MR. FERRELL: Mr. Madden, could you tell us and the Board  
14 how many employees you have at this particular site on 8th and F, Tender Love?

15 MR. MADDEN: Between 7 and 9, as I recall, given a period of  
16 time, depending on the number of children we may have. Plus, we have less than  
17 50 children, probalby, between part-time and full-time, total probably 7, 8 most  
18 times.

19 MR. FERRELL: So you say an average of 8?

20 MR. MADDEN: 7, 8, yes, I would say.

21 MR. FERRELL: Mr. Madden, at some point the rear of your  
22 building, was it renovated to accommoodate a playground for children?

23 MR. MADDEN: The rear of the building is open. It was never --  
24 it's an open space on top of wht used to be a garage and we never filled it in or  
25 made a room out of it which is allowable for children to play in if so desired. As a  
26 result of our arrangement with playgrounds in the area, the schools have allowed us  
27 to use those facilities to give the children more room to exercise and play which I

1 think is much better.

2 MR. FERRELL: I'd like to draw your attention to BZA order of  
3 1991, 15456 that specifically stated that the Applicant shall provide a solid or wood  
4 fence around the deck play around to minimize the noise created by the on-site  
5 outdoor play area.

6 Are you stating here that there's no play area on the site in the  
7 rear?

8 MR. MADDEN: No, I didn't say that. I said that the open area  
9 on top of the garage is open, but can be used for a play area which has a noise  
10 barrier, wood stockade fence on 8th Street which was required, suggested, required  
11 by the Board which I installed.

12 Do the children use it? Basically, no, we don't use it because of  
13 the facilities. We have three schools within walking distance and as I said before I  
14 think there's more fresh air if they get a chance to get out on the playgrounds and  
15 that's what we do on a daily basis. We take them out to the playgrounds.

16 MR. FERRELL: So for the record you're stating there is a play  
17 area and there is a wood fence?

18 MR. MADDEN: Yes, I think if you look at the pictures it will show  
19 a --

20 MR. FERRELL: A play area?

21 MR. MADDEN: Wood fence up there, and behind that wood  
22 fence there's open space on top of the -- what used to be a garage, now an  
23 entrance.

24 MR. FERRELL: Mr. Madden, you testified that there would be  
25 no adverse impact with regards to traffic in this particular area. You are asking for a  
26 variance on off-street parking. How many parking spaces do you anticipate your  
27 staff using during hours of operation?

1 MR. MADDEN: At this time none. Basically, the staff that I  
2 have, previous director drove because she lives out in Maryland. The one I have  
3 now her husband drops her off. Basically, the only parking that we use is down at  
4 600 9th Street is when she needs to take the staff to a conference or meetings when  
5 I'm not available to transport them and she drives in and they're only there during  
6 the time that she picks them up and drops them off, stay in there until the business  
7 closes, when she gets there in the morning, and is getting ready to go to the  
8 conference.

9 I don't anticipate ever, since we've been there, more than one  
10 staff parking down the street, or needing to park down the street.

11 MR. FERRELL: So for the record you're stating that between 7  
12 and 8 staff persons each will use public transportation or will be dropped off by some  
13 other person?

14 MR. MADDEN: That's basically been the practice and to my  
15 knowledge continues to be the practice.

16 MR. FERRELL: Mr. Madden, I believe your testimony was that  
17 you came before the ANC and that the ANC lines of questions was totally germane  
18 to a vacant lot that is owned by you at 7th and Gayle Street. Were you not aware of  
19 the ANC's concerns about the impact on parking in a residential area that is zoned  
20 for two hours that requires a zoning permit which is paid by the residents in that area  
21 at a fee of \$10 per year in order to utilize off-street parking without being ticketed by  
22 DPW or the Metropolitan Police. Do you recall the conversation germane to that  
23 particular issue?

24 MR. MADDEN: I believe that you commented about parking and I  
25 think I said that there had been no parking problems there. The years that we've  
26 been there, this has been the only documentation of complaint of anything we  
27 received from the neighborhood which basically supports everything we do there.

1                   MR. FERRELL: In paragraph 8 of the BZA application, have you  
2                   established a community liaison program to address the problems or concerns  
3                   related to the facility? Have you created some community liaison programs in  
4                   accordance with the law?

5                   MR. MADDEN: We meet and we have invitations from the  
6                   church people who participate. We associate with people across the street, houses,  
7                   facility for mentally retarded. There's always activities with the community.

8                   I think we received support in everything we're asked to do and  
9                   to my knowledge no one has any objections to us being there. They welcome us  
10                  as a matter of fact and it's supported by the number of people who signed that lives  
11                  in close proximity of the day care. They've signed in support this application.

12                 MR. FERRELL: Let me ask the question again, sir. Have you  
13                 established a community liaison program, not have you communicated with certain  
14                 entities in the community, but have you, in fact, established a liaison community in  
15                 accordance with the BZA order of 1991?

16                 MR. MADDEN: Officially, in writing, no. But we have an liaison  
17                 establishment with the community. And we will always continue to have that  
18                 relationship.

19                 MR. FERRELL: Do you have any documentation of DPW  
20                 indicating that the survey regarding the loading zone was not necessary that you  
21                 can provide to the BZA?

22                 MR. MADDEN: That was not provided to me. My understanding  
23                 was they were provided to the office and consequently to the BZA was there was an  
24                 official request that that be done and I asked for it under the order of the BZA.  
25                 Whether they officially came back with the documentation to the BZA, I don't know.  
26                 They told me verbally for the reasons to their objection to putting a loading zone  
27                 there, because it wasn't necessary.

1 MR. FERRELL: So this was a verbal transmittal from DPW  
2 directly to you and nothing was secured in written form?

3 MR. MADDEN: That's correct.

4 MR. FERRELL: Mr. Madden, you've alluded to property that you  
5 own on 9th and F Street and you stated that there were two off-street parking  
6 spaces that you have utilized in order to satisfy the parking requirements for the  
7 Board's order in 1991.

8 Could you provide a lease agreement from the tenants stipulation  
9 that you still control those two parking spaces, notwithstanding the tenants  
10 supposedly are renting property from you at that location?

11 MR. MADDEN: As I stated before I do not rent the whole  
12 property at 600 9th Street, N.E. I only rent part of the property and I keep control of  
13 the parking and the basement unit.

14 MR. FERRELL: Well, let me clarify the question.

15 MR. MADDEN: And the least to the person there's a stipulation  
16 claiming that in the lease and I believe that was submitted to the Board in the first  
17 application.

18 So for the record, I still control --

19 MR. FERRELL: So for the record you're saying there's a  
20 stipulation in the lease that grants you control of the two parking spaces which was  
21 submitted for the record?

22 MR. MADDEN: I said as I recall. It may or may not be in it, but I  
23 think that was submitted to the Board.

24 MR. FERRELL: Is the lease available?

25 MR. MADDEN: I do not have it here with me.

26 MR. FERRELL: Is it available?

27 MR. MADDEN: I have leases to all my properties, yes.

1 MR. FERRELL: Mr. Madden, you did briefly mention about the  
2 parking lot that hte BZA special exception tha was granted you regarding a parking  
3 lot 17th and Gayle Street. Are these pictures adequate?

4 MR. PARSONS: This case isn't before us.

5 MR. FERRELL: I'm not addressing it as a case --

6 MS. PRUITT-WILLIAMS: Mr. Ferrell, you have to talk into the  
7 mike.

8 MR. FERRELL: It's for another purpose, not to get into whether  
9 the BZA --

10 CHAIRPERSON REID: Tell us what your intent is.

11 MR. FERRELL: My intent is to show that Mr. Madden has been  
12 before our ANC and before the Board on several occasions and that the community  
13 has worked with Mr. Madden in order to support his business endeavors.  
14 Howsever, Mr. Madden has renegged on his agreements to teh community on a  
15 number of occasions.

16 CHAIRPERSON REID: Now that's a picture of what?

17 MR. FERRELL: Of his vacant lot that resides at 17th and Gayle  
18 Street.

19 MS. PRUITT-WILLIAMS: That is not before us today.

20 MR. FERRELL: I understand, that's fine.

21 MS. PRUITT-WILLIAMS: You can't show them to him bekcause  
22 they will have to become part of the record and that's why.

23 MR. FERRELL: I was just asking. I think that's all the questions  
24 I have.

25 MS. PRUITT-WILLIAMS: Okay.

26 disaster

27 MR. PERNELL: My name is Daniel Pernell. I'm Chairman of the

1           6A Commission. I just have three questions I'd like to ask Mr. Madden.

2                           Mr. Madden, do you have insurance on your facilities to protect  
3           the children there?

4                           MR. MADDEN: Yes, I do.

5                           MR. PERNELL: What does it cost? What is the insurance  
6           coverage?

7                           MR. MADDEN: Whatever the District requires --

8                           MR. PERNELL: Excuse me --

9                           MS. PRUITT-WILLIAMS: Mr. Pernell, that's not a zoning issue.

10                          MR. PERNELL: But it's an issue required by all facilities.

11                          MS. PRUITT-WILLIAMS: But it's not an issue we have  
12           jurisdiction over, so it's not appropriate.

13                          MR. PERNELL: Well, he's partly answered the question. He's  
14           already answered that question to me, so I'd like to get a complete answer.

15                          MR. MADDEN: I withdraw my question.

16                          CHAIRPERSON REID: Go on to your next question.

17                          MR. PERNELL: The next question is what kind of relationship  
18           have your facilities done in the community in relationship with the Commission?

19                          MS. PRUITT-WILLIAMS: In relationship to this case, sir?

20                          MR. PERNELL: Yes, it is.

21                          MS. PRUITT-WILLIAMS: I'm not hearing the question, that's  
22           why I'm asking.

23                          MR. MADDEN: I appear before the Commission at their request.

24                          MR. PERNELL: I'm not talking about that. You said earlier in  
25           your statement that you had a relationship with your facility community. I'm trying to  
26           establish what relationship you have. We're not privileged of it at this time.

27                          MR. MADDEN: Well, I just mentioned the community in which I

1 operate, the ANC in that area and I deal with --

2 MR. PERNELL: We didn't know of your facility until you had  
3 your applicatoin before us.

4 MR. MADDEN: I'm sorry?

5 MR. PERNELL: We didn't know of your facility until you had an  
6 application before us.

7 MR. MADDEN: I appeared before the ANC in the initial  
8 application and some of your members were present on that committee at the time  
9 and on the last committee, still existed, so they were aware that facility being there.

10 MR. PERNELL: Are you talking about 1991?

11 MR. MADDEN: When we applied the first time, same  
12 committee.

13 MR. PERNELL: There are no commissioners on the present  
14 commission that were there in 1991. Mr. Ferrell and I who are present here today  
15 came on in 1995, January 2nd.

16 MR. MADDEN: I'm sorry. We met on some occasions, but I beg  
17 your pardon.

18 MR. PERNELL: Madam Chair, I reserve the rest of my  
19 information for my statement at the end.

20 CHAIRPERSON REID: Thank you. Mr. Madden, now we will  
21 have -- you can go back -- we discussed briefly a letter that came from Ms. Fatah  
22 with regard to government reports and licensing regulations, administration and talks  
23 about the situation that the Tender Love Child Development Center had programs  
24 for 29 students and 10 infants. And this number of children and number of infants is  
25 accurate with the current structure and configuraton of the center is basically all she  
26 said.

27 ANC reports? I don't think we have any other government



1 reports.

2 MR. PERNELL: Good evening, my name is Daniel Pernell III  
3 and I am Chairman of the 6A Commission.

4 Madam Chair, I just want to clear up a few things. There was no  
5 pre-consumptions of any of my Commissioners that were present on February 18th  
6 concerning Mr. Madden's BZA application 16448. We were elected by the people,  
7 therefore we are under D.C. law we are representing community, not on any pre-  
8 consumptions of our personal beliefs or concerns before the Commission. We  
9 answered only those questions that were given to us by the surrounding community  
10 of Mr. Madden's facility at 720 F Street, N.E.

11 CHAIRPERSON REID: Mr. Pernell, what did you say BZA --

12 MR. PERNELL: 16448.

13 CHAIRPERSON REID: This is 16446.

14 MR. PERNELL: I'm sorry, 16446. I've got two cases here, I'm  
15 sorry. I correct that. 16446.

16 Also, I wanted to say that I think Mr. Madden's facility should  
17 have insurance. There are a number of facilities in our area that require they do --

18 MS. PRUITT-WILLIAMS: Mr. Pernell, we've already gone  
19 through that. That's not --

20 MR. PERNELL: This is my statement.

21 MS. PRUITT-WILLIAMS: I understand, but we're not talking  
22 about that in this case.

23 MR. PERNELL: I'm reading from my statement and I think my  
24 statement is for the record, whether it is for or not for this case. Thank you.

25 As I said before I believe this facility should have --

26 MR. PARSONS: Madam Chair, I think his statement has to be  
27 relevant. I'm not sure insurance is a relevant matter. In a case this morning that we

1 had we required that the people make their testimony relevant on the issues --

2 MR. PERNELL: My case is relevant and I am speaking for the  
3 state and constituents of 28,000 --

4 MR. GILREATH: Why don't we let him read it and we'll just  
5 ignore it.

6 MR. PERNELL: Anyway, from my experience in the community,  
7 I believe this facility should have insurance. We have a number of complaints from  
8 communities in the area where these facilities do not have insurance. When a child  
9 is hurt at this type of facility, who takes the blame? So that is the concern, why I'm  
10 reading it from my statement.

11 The great impact concerning the BZA, I'm going to let it rely on  
12 Mr. Greg Ferrell because he has the most experience in that area and I reserve the  
13 rest of my minutes for Mr. Ferrell.

14 MR. FERRELL: For the record, the Advisory Neighborhood  
15 Commission, Gregory Ferrell. I represent single member district 6A-12.

16 For the record, I would like to indicate that the ANC has no real  
17 reason to try to impose Mr. Madden based on any personal feelings about Mr.  
18 Madden as a business man. However, as ANC elected officials, we do have an  
19 obligatoin to listen to the concerns of the constituencies that we represent which his  
20 facility resides in one o four single member districts.

21 We do have some certain concerns about whether or not Mr.  
22 Madden would live up to conditions that are imposed by the BZA, predicated upon  
23 the history of dealing with Mr. Madden.

24 We've also went through the ccommunity and talked to a number  
25 of the residents who reside in that particular area. As the letter that supported our  
26 position regarding the current parking situation that currently exists at the point of  
27 8th and F Street. There is a Metro bus. The Metro bus is heavily traveled. It's a 92

1 route. It's heavily traveled. We have concerns about the drop off and the pick up of  
2 kids.

3 Even with 36 kids, theoretically you could have 25 different  
4 individuals with cars dropping kids off, curbside drop off, no off-street parking. So  
5 you can pull up to a driveway and drop children off, people in the community are  
6 concerned about that issue. People in the community at that particular area are  
7 always, always, I mean always, giving to outside interest outsiders for parking. The  
8 residents in that area pay \$10 per year. I pay \$10 per year to park on the street.  
9 Unfortunately, I don't have a home with a garage. I don't have a home with a  
10 driveway, but in order not to be ticketed I have to pay the city \$10. We're not saying  
11 that Mr. Madden should not operate the Tender Love Daycare Center, but we're  
12 saying that the capacity to operate such a center with 50 kids without assuring that  
13 the impact would not adversely affect the community is an issue that our ANC had to  
14 address and I believe we do so appropriately.

15 Mr. Madden has made several inconsistent statements with  
16 regard to the make up of our Commission. I was never ever a Commissioner in  
17 1991. I was sworn into office as stated by Commissioner Pernell in 1995, January  
18 2nd and I supported Mr. Madden on his BZA application in hopes of improving my  
19 neighborhood. So there's no personal agenda against Mr. MAden here. Our  
20 agenda is one solely to try to protect the interests of the citizens, of the District of  
21 Columbia, while also recognizing as business people, and I'm a business man, we  
22 do have a right to exist and co-exist in residential neighborhoods, but as an elected  
23 official and after taking careful consideration from the residents in that particular  
24 area, I'm not suggesting that the BZA shut Tender Love Child Care Center down, but  
25 I'm asking the BZA use its authority to make sure the residents in a residential  
26 neighborhood is not trashed on by business interests, whatever they may be. I'm  
27 not against children. I love children. I have children, but there is a community issue

1 that needs to be addressed and we need to insure the folk that are giving the order  
2 by this BZA comply with the orders.

3 We have a right to -- we have an obligation to comply and I  
4 believe that anybody who receives an order from the BZA should be in compliance  
5 and if they have proven in plenty of instances that they have not been in compliance,  
6 I believe that the Board should give that some consideration. Thank you.

7 MR. PERNELL: Madam Chair, for the record, I would say that  
8 as an elected official of the District of Columbia and to the residents of the District  
9 that my statement here today will be accepted by this Baord in full in its entire text.  
10 Thank you.

11 CHAIRPERSON REID: Thank you.

12 MS. PRUITT-WILLIAMS: I have one quick question. On your  
13 resolution dated March 18th, in the back you have votes, yes, no and present. It  
14 appears to be written in 9. Is that correct? I didn't undersatnd.

15 MR. FERRELL: The tally, the vote?

16 MS. PRUITT-WILLIAMS: Yes.

17 MR. FERRELL: Let me look at yours. Excuse me, the vote was  
18 8 yes.

19 MS. PRUITT-WILLIAMS: My question is your vote was 8 yes,  
20 but then you have 0 for no and 0 for present. There are more than 8 names on the  
21 list.

22 MR. FERRELL: We just listed the commissioners. There were 8  
23 commissioners present. OUT of 14, 8 were present.

24 MR. PERNELL: I'd also like to make a correction while you have  
25 that out there that whereas he said Commissioner Daniel Pernell, single member  
26 district, that's the other one. ON this case before us -- pardon me --

27 CHAIRPERSON REID: I jsut want to make sure that I'm

1 listening to Commissioner Pernell. Didn't I hear you say you're not opposed?

2 MR. FERRELL: We are opposed to Mr. Madden operating a  
3 facility with the potential to have 50 children in it. That's our opposition. And the  
4 resolution we went as far as saying he should be able to operate with only 15.

5 CHAIRPERSON REID: He has 30.

6 MR. FERRELL: After hearing the testimony of Mr. Madden, and  
7 having read into the record the zoning persons' position with regard to 10 infants and  
8 29 --

9 CHAIRPERSON REID: Oh no, that was from the licensing --

10 MR. FERRELL: Having given that some consideration, I believe  
11 that Mr. Madden can operate at a facility, but to have a facility operate with 50 kids,  
12 knowing that area, the traffic problems, the bus route which is a major bus route, the  
13 92 route stretches from Northwest to Southeast Washington, I do believe that he can  
14 exist, but I don't believe he needs to exist with the potential to have 50 kids. I could  
15 agree with a scaled down number of children.

16 CHAIRPERSON REID: The number that he has now, are you aware of  
17 any complaints?

18 MR. FERRELL: There are still --

19 CHAIRPERSON REID: Traffic, parking, drop off and pick up?

20 MR. FERRELL: There are several complaints about drop off and  
21 pick up. A lot of the parents or guardians, they drop off on the corner of 8th and F  
22 which is a bus route, heavily traveled intersection and it causes traffic problems in  
23 the morning and in the evening, in particular, especially with the buses, the Metro  
24 bus. That's one of the major concerns.

25 Also, the residents in the area, Mr. Madden indicated that the  
26 majority of his staff people use public transportation or are dropped off to work.  
27 From what we had gathered from the residents, that's not the case. There are

1 employees that use public parking and they use it five days a week and that's a  
2 concern because we have residents who pay \$10 per year for Ward 6 zone sticker  
3 to utilize public parking spaces without being ticketed. Several residents have  
4 complained about when they come home from work there's no parking in front of  
5 their house on 8th Street.

6 There was a home for the mentally ill or people with mental  
7 disabilities across the street. I believe they were shut down.

8 CHAIRPERSON REID: Excuse me --

9 MR. FERRELL: Well, that's a concern about parking as well,  
10 people that -- I wasn't aware -- they still have that concern as well, that we feel,  
11 numerous occasions that the area is really residential. You do have a few  
12 commercial establishments, but for people having to park a block or two away from your  
13 homes, especially in the evening time when they leave to go to work, they come  
14 back and there's no parking space.

15 CHAIRPERSON REID: So you're saying that your objection is  
16 with an increase, up to 50, but at the current level that's not objectionable to you?

17 MR. FERRELL: The current level is 36?

18 CHAIRPERSON REID: Yes. 39.

19 MR. FERRELL: 39.

20 CHAIRPERSON REID: That's as it exists right now.

21 MR. FERRELL: Based upon the letter that we read into the  
22 record, the fire inspection that was done, they say the facility is only able to  
23 accommodate 39 kids and staff people, then I believe that that will be appropriate for  
24 a condition at that particular facility. I hope I'm not speaking out of turn for the  
25 community because I'd be in trouble, but personally, after hearing what was read  
26 into the record, I believe that that facility should be able to accommodate what our  
27 D.C. Fire Inspector said it can accommodate, 38, but I don't think an increase to 50

1 is necessary.

2 CHAIRPERSON REID: Okay.

3 MR. PERNELL: Madam Chair, also, I ride that 92 and 90 bus on  
4 that line on a number of occasions because I live right off of Florida. You know  
5 where I live at, so I ride that 90 bus and waht I've seen coming right at 8th and F,  
6 coming from Mr. Madden's day care facility there is that a number of those families  
7 who are picking up children below the property have to use that Metro bus.  
8 Therefore, they're crossing the avenue going to 8th and H Street, N.E. and they're  
9 crossing in front of that busy intersection at 8th and F Street, causing a lot of -- in  
10 fact, we had a couple that got off the other day had three children they took out of  
11 his facility by crossing in front of that traffic and I don't see anything from the facility  
12 that they're trying to see the safe and welfare of the kids in crossing that highway  
13 along with their parents, even though they're being assisted by their parents. I think  
14 they should take part of the impact of that blame in the community.

15 CHAIRPERSON REID: Okay. Any other questions? Thank you  
16 very much. Capitol Hill Restoration Society. Party in the case? You're not going to  
17 make a statement, just rest on your written submission. Okay, thank you very much.

18 Okay, persons and parties in support of the application?

19 Persons and parties in opposition?

20 MS. PRUITT-WILLIAMS: Will you oplease state your name and  
21 address for the record?

22 MS. GOODMAN: I'm Janice Goodman at 512 8th Street, N.E.  
23 When I received the notice of the renewal of an application, the two issues of a  
24 special exception child development and a variance from the off-street parking  
25 requirements, two things -- I'll respond to both things. First thing, in 1991 the  
26 community accepted Tender Love into the neighborhood. I believed it was going to  
27 be a very small operation that would not have a high impact on the community.

1 When Mr. Madden says that he bought that property many years ago, I've lived  
2 there 12 years and I must say in the 12 years the neighborhood has gone through  
3 many ups and downs, so I can attest to that. The building was vacant, although I  
4 don't know that having 50 children there would actually add to the community

5 I would also led to believe that it was going to be for very small  
6 toddlers and infants. Toddlers and infants have a very different impact on a  
7 community than 12 year olds in terms of the kind of space they need, in terms of  
8 how they move about a space, how they move about in the neighborhood. So I can  
9 understand the zoning problem if you have infants, they need a certain amount of  
10 space and if you have 12 year olds, you need a different kind of space. I don't  
11 believe that that facility can accomodate 50 12 year olds. It is basically a corner  
12 rowhouse brownstone with an additional garage attached to it. So as far as space is  
13 concerned, I think if there are 36 children there now, 10 of which are infants, I  
14 cannot imagine it increasing in any way the number of more adult or ambulatory  
15 mobile children. So that's with regard to that.

16 With regard to the parking, Mr. Madden said that he is basically  
17 the only person that drives and would park his car and since he already has a space  
18 at 9th and F, then why would he need any sort of variance? Why would he need  
19 any sort of exception for staff because all staff all take public transportation, then  
20 there's no need for him to have additional space allowed for his facility. He's stated  
21 that he's the only one that drives and parks there and everybody else takes the bus  
22 or walks. So I don't understand why there would be a need for him not to be  
23 required, not to meet the requirements that everybody else in the neighborhood.  
24 However, the neighborhood is already heavily stressed with excessive cars. The  
25 Department of Motor Vehicles does not come around and regularly check license  
26 tags. On any given date on my block there are probably a dozen out of state tags,  
27 as is the case in many of areas around. I think the further they get from Union



1 Station, the fewer tickets are issued. Especially in the evening and since Mr.  
2 Madden's facility operates until 7 p.m. I know I come home from work and I often  
3 cannot find a place to park my car. Now I understand that \$10 is not very much for a  
4 person to have to pay to park my car, however, I have chosen to live in a community  
5 to be part of a neighborhood. Mr. Madden says his address is on K Street, but I  
6 don't believe Mr. Madden lives in that neighborhood. Most of the people coming to  
7 that facility do not live in that immediate neighborhood. Maybe if Mr. Madden is  
8 intersted in expanding his facility, he might want to move his center to a place which  
9 is more accessible to the tenants or to the people that use the facility. Most of the  
10 children I see going to the facility are children dropped off by a car or coming by bus.  
11 IO do not see the local residents actually using the facility. It seems to me  
12 something which has been placed there because Mr. Madden happen to speculate  
13 the property in our community ten or 15 years ago when property was very cheap.

14 Okay, then the other thing to address, getting back to a 12 year  
15 old child needs a certain kind of play area. A townhouse on a corner of a very busy  
16 intersection is not the kind of area that a 12 year old should be expected to play in if  
17 there are 50 other children are in that facility.

18 Let me just tell you about a few other facilities that are in our  
19 community that have been imposed on us by the District and by nonprofits and other  
20 establishments. We have pregnancy testing center, a rape crisis center, a renal  
21 center. Sasha Bruce House, across the street from the Tender Care is a home for  
22 mentally disabled individuals which are residents. On the other corner is a very  
23 derelict building which houses three various churches which are allowed to park  
24 their cars on the sidewalk. Across the street from them is a convenience store,  
25 quote unquote a supermarket which really only sells liquor and lottery tickets, but  
26 they continue to have their licenses renewed.

27 The point I'm making here is that this is already a very fragile

1 neighborhood. Last year we started a block association to try and raise money and  
2 raise awareness of what is going on and we did a yard sale and we managed to  
3 raise enough money to plant five trees in our immediate facility. I have lived there  
4 for 12 years. Most of my neighbors have lived there for 12 years. We're trying to  
5 make it a safe neighborhood. I don't object to Mr. Madden being there. I think  
6 Tender Love is fine there. I don't think he should be allowed variances in parking  
7 and I don't think he should be allowed to expand the number of children that  
8 presently exist at the facility.

9 Thak you. Do you have any qeustions for me?

10 CHAIRPERSON REID: Mr. Madden, do you hae any questions  
11 for this witness?

12 MR. MADDEN: Yes.

13 CHAIRPERSON REID: Come forward, please.

14 MR. MADDEN: I'm sorry, I ddin't get your name.

15 MS. GOODMAN: Janice Goodman.

16 MR. MADDEN: What address do you say you live?

17 MS. GOODMAN: 512 8th.

18 MR. MADDEN: 3rd Street?

19 MS. GOODMAN: 8th.

20 MR. MADDEN: Did someone come to yoru door for -- t oget  
21 your approval in the applciation?

22 MR. MOORE: Eight years ago?

23 MR. MADDEN: No recently.

24 MS. GOODMAN: No. The only time was in 1991 when you  
25 started it and I vaguely remember signing some form that said we would be in  
26 support of a -- an infant day care, a small day care thing.

27 MR. MADDEN: You made inference about the property a long

1 time ago when it was expensive. I just wanted to tell you that --

2 CHAIRPERSON REID: You have to ask.

3 MR. MADDEN: Do you know when the property was  
4 purchased?

5 MS. GOODMAN: By you?

6 MR. MADDEN: Yes.

7 MS. GOODMAN: All I know is you made reference in your  
8 statement that you had purchased the properties after the riots and you managed to  
9 sort of use the riots as a focal point for all your differences, so I'm assuming that  
10 after the riots the properties were cheap.

11 MR. MADDEN: That's not --

12 MS. PRUITT-WILLIAMS: You can only ask questions. You can  
13 clarify that in your closing statement, sir.

14 MR. MADDEN: Do you drive?

15 MS. GOODMAN: Yes, I do. And I also use public transportation.

16 MR. MADDEN: Do you have off-street parking?

17 MS. GOODMAN: I have a spot behind my house, but it has  
18 been converted into a garden.

19 MR. MADDEN: So obviously it's a parking problem for you?

20 MS. GOODMAN: I park on the street.

21 MR. MADDEN: You don't have any parking problem?

22 MS. GOODMAN: I said I do have a parking problem.

23 MR. MADDEN: You said you had a space?

24 MS. GOODMAN: The reason I don't park in my alley is because  
25 a woman was murdered there about five years ago and there was a number of  
26 problems in our alley and I decided that it would probably be safer for me when I  
27 come -- I teach at the Corcoran. When I come home at 10 o'clock at night, I'd rather

1 park on a well-lit street than park in an iproperly lit alley.

2 MR. MADDEN: Do you pay for a permit?

3 MS. GOODMAN: Yes.

4 MR. MADDEN: Have you seen any accidents in that facility?

5 MS. GOODMAN: No, I've not seen any accidents.

6 MR. MADDEN: Have you seen the children threatened of being  
7 run over?

8 MS. GOODMAN: No, I have not.

9 MR. MADDEN: Close accidents?

10 MS. GOODMAN: No.

11 MR. MADDEN: Hvae the children disturbed you in any way?

12 MS. GOODMAN: Not at all.

13 MR. MADDEN: Have the staff been rude to you in any way?

14 MS. GOODMAN: I don't know who your staff is.

15 MR. MADDEN: Have you been to the center?

16 MS. GOODMAN: I've been around the center. I haven't been in  
17 the center.

18 MR. MADDEN: Have you seen any 12 year olds in the center?

19 MS. GOODMAN: No, I haven't seen any odler children. I've  
20 only seen really small children like children under the age of 7. I didn't even realize  
21 you went up to teh age of 12.

22 MR. MADDEN: So to your knoweldge there have never been  
23 any there.

24 MS. GOODMAN: Right. I've never seen any larger children.  
25 I've only seen basically pre-school aged children there which I assume it was, a pre-  
26 school facility.

27 MR. MADDEN: So is there any reason to think there's any

1 representative change in that belief?

2 MS. GOODMAN: What leads me is your comments that  
3 regarding the numbers. You state as you have infants you need more space and as  
4 you take in more children you need less space. If I was a business person and I  
5 knew that I could put more people in a space and charge so much money, then I  
6 would think that having infants would not be as profitable as taking 12 year olds. If  
7 you could have 50 12 years at so much and so many infants at so much, but so  
8 many more 12 year olds, I would think that there's a chance it would become a  
9 center that was not really for smaller children, but was for older children since they  
10 are required to have less space.

11 MR. MADDEN: Would you think a business person that took on  
12 infants and loss of money would be an asset to your community?

13 MS. GOODMAN: I'm not talking about -- all I'm saying -- I don't  
14 think I understand your question.

15 MR. MADDEN: Since you're saying that 12 year olds produce  
16 more money --

17 MS. GOODMAN: For you.

18 MR. MADDEN: And I decided to put infants on which is less  
19 money, wouldn't you think that would be an asset, if a business person took on his  
20 own to lose money and to serve the community?

21 MS. GOODMAN: The way infants are an asset to the  
22 community is that they're quieter. They don't throw trash on the street. They're not  
23 going to run in front of a bus. They're not apt to go across the street and make fun  
24 of mentally disabled children and adults, they're not as apt to go across to the  
25 convenience store and steal candy off of shelves. They're not as apt to pull flowers  
26 out of gardens. A 12 year old can do that and an infant cannot do that.

27 MR. MADDEN: But you said you haven't seen any 12 year olds

1           --

2                           MS. GOODMAN: As I said I haven't seen any 12 years old. And  
3           as you said, most of the children now are infants through 5. I mean my concern is  
4           with older children. My concern is not with younger children.

5                           MR. MADDEN: So before the BZA today, hypothetically we're  
6           thinking that these things will happen if 12 year olds are there

7                           MR. PERNELL: m

8           s thr A ell